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MONTANA
MILK CONTROL DIVISION
LAWS

Chapter 4, Section 27-401 thru 27-429

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INDEX

	SECTION	PAGES
Declaration of policy relating to milk.	27-401	1, 2, & 3
General purpose.	27-402	3
Definitions.	27-403	4 & 5
Milk control board	27-404	5
General powers of milk control board	27-405	5
Markets.	27-406	6
Establishment of minimum prices.	27-407	6, 7, 8, 9, 10
Licenses to producers, producer-distributors, distributors & jobbers	27-408	11
Licenses--disposition of income	27-409	11 & 12
Application for licenses.	27-410	12
Declining, suspending, revoking licenses--penalties in lieu of suspension or revocation	27-411	13
Repealed	27-412	13
Rules and orders	27-413	13 & 14
Rules of Fair Trade Practices.	27-414	14
Limitation of extension of credit to retailers	27-414.1	15
Financing prohibitions--producer and retailer	27-414.2	15 & 16
Entry, inspection and investigation	27-415	16
Reports of dealers--accounting system--records.	27-416	16 & 17
Disposition of fines	27-417	17
Formation of local associations.	27-418	17 & 18
Repealed.	27-419	18
Hearings--fees.	27-420	18
Cooperation with other governmental agencies.	27-421	18 & 19
Violations made misdemeanors--penalties	27-422	19
Constructions, exceptions & limitations.	27-423	19 & 20
Additional remedies.	27-424	20
Transfer of assets.	27-425	20
Bonds required of distributors--amounts--forms and conditions.	27-426	21 & 22
Repealed.	27-427	22
Judicial review of orders	27-428	22 & 23
Service of process upon board	27-429	23

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CHAPTER 4

SUPERVISION OF MILK INDUSTRY--STATE MILK CONTROL BOARD

Section 27-401. Declaration of policy relating to milk.
27-402. General purpose.
27-403. Definitions.
27-404. Milk control board.
27-405. General powers of milk control board.
27-406. Markets.
27-407. Establishment of minimum prices.
27-408. Licenses to producers, producer-distributors, distributors, and jobbers.
27-409. Licenses--disposition of income.
27-410. Application for licenses.
27-411. Declining, suspending and revoking licenses--penalties in lieu of suspension or revocation.
27-412. Repealed.
27-413. Rules and orders.
27-414. Rules of fair trade practices.
27-414.1 Limitation on extension of credit to retailers.
27-414.2 Financing prohibitions--producer and retailer.
27-415 Entry, inspection and investigation.
27-416. Reports of dealers--accounting system--records.
27-417. Disposition of fines.
27-418. Formation of local associations.
27-419. Repealed.
27-420. Hearings--fees.
27-421. Co-operation with other governmental agencies.
27-422. Violations made misdemeanors--penalties.
27-423. Constructions, exceptions and limitations.
27-424. Additional remedies.
27-425. Transfer of assets.
27-426. Bonds required of distributors--amounts--forms and conditions.
27-427. Repealed.
27-428. Judicial review of orders.
27-429. Service of process upon board.

27-401. Declaration of policy relating to milk. It is hereby declared:

(a) That milk is a necessary article of food for human consumption;

(b) That the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) That the production, transporation, processing, storage, distribution and sale of milk in the state of Montana, is an industry affecting the public health and interest;

(d) That unfair, unjust, destructive and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, and products manufactured therefrom, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) That health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) That it is the policy of this state to promote, foster and encourage the intelligent production and orderly marketing of milk and cream and productions manufactured therefrom; to eliminate speculation and waste, and to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) That investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk, and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to privide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing and chaotic conditions and trade practices within the industry, which have in the past affected the industry and which constantly threatened to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) That milk is a perishable commodity, which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into by-products of milk at great expense and ofttimes at a loss to the producer and distributor;

(j) That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and ofttimes to produce milk of an inferior and unsanitary quality;

(k) That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) That, where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) That, due to the nature of milk and the conditions surrounding its production and distribution, and natural law of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

27-402. **General Purpose.** The general purpose of this law is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

27-403. **Definitions.** As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana Milk Control Board.

"**Person**" means any person, firm, corporation or co-operative association.

"**Producer**" means any person who produces milk for consumption within the state, selling some to a distributor.

"**Distributor**" means any person purchasing milk from any source, either in bulk or in packages, and distributing same for consumption within the state. Said term includes what are commonly known as jobbers and independent contractors. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"**Producer-distributor**" means any person both producing and distributing milk for consumption within the state.

"**Retailer**" means any person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

"**Dealer**" means any producer, distributor, producer-distributor, jobber or independent contractor.

"**Licensee**" means any person who holds a license from the board.

"**Association**" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"**Market**" means any area of the state designated by the board as a natural marketing area.

"**Consumer**" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"**Producer prices**" means those prices at which milk owned by a producer is sold in bulk to a distributor.

"**Wholesale prices**" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

"**Jobber prices**" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

"Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

"Milk" means the lacteal secretion of a dairy animal or animals, including such secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh or otherwise processed and all of which is designated as grade A by a duly constituted health authority, and also includes such secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

Class I milk shall include all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this act, whether raw, pasteurized, homogenized, sterile or aseptic.

Class II milk shall include milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

Class III milk shall include milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

The board shall have power and authority to assign milk products hereafter developed to the class which in its descretion it determines to be proper.

27-404. Milk control board.

Cross-References

Board continued in department of business regulation, sec. 82A-406.

Bonds of state officers and employees, sec. 6-105 et seq.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

27-405. General powers of the milk control board.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(2).

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act.

(a) Natural marketing areas shall be established forthwith throughout the state by the board; provided that before any proposed natural marketing area is established the board, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within said proposed natural marketing area, who are licensed by the Montana livestock sanitary board, and the consuming public may present evidence and testify; and in the event the hearing or hearings make it evident to a majority of the board that the establishment of such proposed natural marketing area is in the public interest, the board shall make findings and conclusions and proceed to establish such natural marketing area.

(b) The board shall have the power, from time to time and at its discretion, to adjust and alter the boundaries of natural marketing areas after they have been established, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds and orders such adjustment to be in the public interest.

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by the milk control board in this state at the time of passage of this act which are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) The board shall at all times maintain current information on quantities of surplus grade A milk available in the various marketing areas throughout the state, and such information shall be available to all interested parties on request.

27-407. **Establishment of minimum prices.** The board is hereby authorized and directed to fix minimum producer, wholesale, jobber, and retail prices for Class I milk, and minimum producer prices only for Class II and Class III milk in all areas of the state.

The board shall establish such prices by means of flexible formulas which it shall adopt by official order and which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

Prior to promulgation of such formulas the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

The board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

Such specific factors may include, but shall not be limited to, the following items:

(1) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(2) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(3) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(4) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(5) The prices of butter-nonfat dry milk, and cheese;

(6) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(7) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(8) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices of bulk milk;

(9) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have oppor-

tunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such hearing, shall make written findings and conclusions and shall fix by official order:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in Class I shall be computed.

This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

Each order establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order establishing or revising milk pricing formulas, the board shall hold a public hearing on such matter in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof.

27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings.

27-409. Licenses--disposition of income. No producer, producer-distributor, distributor or jobber shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this act by the milk control board. The annual fee for such license from the milk control board shall be two dollars ($2), shall be due and payable on or before the first day of July, and shall be deposited by said board to the credit of the general fund.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee of not more than five cents (5¢) per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee of not more than two and one-half cents (2½¢) per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee of not more than two and one-half cents (2½¢) per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth (15th) day of July, October, January and April of each year, and the amount of such assessment shall be

computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessments when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be affected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control board moneys in such fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

27-410. Application for licenses. As applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cosmetic Act, and such application shall be accompanied by the license fee required to be paid.

27-411. Declining, suspending and revoking licenses--penalties in lieu of suspension or revocation. (1) The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license or assessment fees, or any of them, shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board.

(2) In lieu of a suspension or revocation of a license the board may assess a civil penalty not to exceed five hundred dollars ($500) per day for each daily failure to comply with or each daily violation of the provisions of this act or of any lawful order or regulation of the board; and if the person against whom such civil penalty is assessed fails or refuses to pay such civil penalty forthwith, the board is empowered and directed to collect such civil penalty by a civil proceeding in the district court of the first judicial district. Such civil penalties shall be construed as civil and not criminal in nature. Any moneys received by the board as a result of collection of civil penalties shall be paid into the state general fund.

27-412. Repealed--Chapter 192, Laws of 1959.
Repeal

This section (Sec. 12, Ch. 204, L. 1939), relating to the penalty for delinquency in payment of license fee, was repealed by Sec. 14, Ch. 192, Laws 1959.

27-413. Rules and orders. The board may adopt and enforce all rules and all orders necessary to carry out the provisions of this act. Every rule or order shall be posted for public inspection in the main office of the board for thirty (30) days, and a copy filed in the office of the board, also a copy sent by registered letter to the secretary of each area, excepting an order directed only to a person or persons named therein, which shall be served by personal delivery of a copy, or by mailing a copy, in the United States mails, with postage prepaid and properly addressed to each person to whom such order is directed, or, in the case of a corpor-

ation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the statutes of Montana. Such posting, in the main office of the board, of any rule and any order, not required to be served as above provided, and such filing in the office of the board shall constitute due and sufficient notice to all persons affected by such a rule or order. A rule or order when duly posted and filed or served, as provided in this act, shall have the force and effect of law.

27-414. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licenses under this act and among licensees and the general public. Such reasonable rules and regulations governing fair trade practices shall contain, but shall not be limited to, provisions regarding the following methods of doing business which are hereby declared unfair, unlawful, and not in the public interest:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

(c) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of any milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board pursuant to this act.

(e) The payment of a less price than the applicable producer price established by the board pursuant to this act by a distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.

27-414.1. Limitation on extension of credit to retailers. No sale or delivery shall be made by any producer-distributor, distributor or jobber to any retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors and jobbers shall bill retailers at least monthly. In no event shall any producer-distributor, distributor, or jobber extend more than fifteen (15) days' credit after billing to a retailer, nor shall any retailer accept or receive delivery of such milk without agreement to pay in cash therefor within fifteen (15) days after regular billing therefor. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of producer-distributors, distributors, or jobbers involved in violation hereof shall be suspended or revoked as determined by the board in its discretion.

27-414.2. Financing prohibitions--producer and retailer. No producer, producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any retailer, and no producer, producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer; and no producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any producer, and no producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer; provided, however this section shall not be construed so as to prohibit any producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

This section is not to be construed to prohibit a producer from requesting and a distributor from granting an advance payment for milk prior to the regular date of payment therefor or to limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

27-415. Entry, inspection and investigation. The board, or any person designated for that purpose by the board, shall have access to, and may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to such transactions are kept and shall have the power to inspect and copy the same in any place within the state, and may administer oath, and take testimony for the purpose of ascertaining facts, which, in the judgment of the board, are necessary to administer this act.

27-416. Reports of dealers--accounting system--records. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showning such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board.

The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

Every distributor and producer-distributor shall keep the following records:

(a) A record of all milk, cream or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which such milk or cream was put.

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold.

(c) A full and complete record of all milk, cream or dairy products sold, classified as to kind and grade, showing where sold, and the amount received therefor.

(d) A record of the wastage or loss of milk or dairy products.

(e) A record of the items of handling expense.

(f) A record of all refrigeration facilities rented or sold for storage purposes to any person, showing types and sizes of the same, the location of said facilities, and the original, or duplicate original, of all agreements covering rental charges therefor.

(g) A record of all conditional sales of equipment or other property, the location of said property, and the original, or duplicate original, of all conditional sales contracts pertaining thereto.

(h) A record of all moneys loaned to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans.

(i) Such other records as the board may deem necessary for the proper enforcement of the act.

27-417. Disposition of fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All fines received by the board shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. All such fines assessed for violations of this act, are hereby earmarked for the purposes of this act.

27-418. Formation of local associations. The board shall have power and it shall be the duty of the board to promote and foster in each established market, an association organized under regulations satisfactory to the board and composed of all licensees of the board and designated as the dairymen's association of such market, It shall be the function of such association to promote the mutual interests of its members and of the dairy industry, but its

specific function with relation to the board shall be to provide an instrument whereby the licensees within the market may and they shall unitedly co-operate with and be of assistance to the board in determination, assembling and presentation of facts and findings relative to the costs of production, costs of distribution, and other factors upon which price schedules shall be based, and to otherwise counsel and assist the board as opportunity may afford in carrying out and enforcing the provisions of this act.

Such associations are hereby declared to be instrumentalities of the board and as such may receive as compensation for their services and as a means to their efficiency a percentage of the license fees paid to the board from the market so organized not to exceed ten per cent (10%) of the annual total of such license fees.

27-419. Repealed--Chapter 192, Laws of 1959.

Repeal

This section (Sec. 19, Ch. 204, L. 1939), relating to co-operative corporations, was repealed by Sec. 14, Ch. 192, Laws 1959.

27-420. Hearings--fees. Each officer, other than an employee of the board, who serves any subpoena of the board, shall receive the fees legally provided for such service and each witness who appears in obedience to a subpoena, before the board or a member or its agent, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in district courts, which fees shall be audited and paid in the same manner as other expenses are audited and paid upon the presentation of proper vouchers, approved by the board.

No witnesses subpoenaed at the instance of a party other than the board, or one of its members, or its agent, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated.

27-421. Co-operation with other governmental agencies. In order to secure a uniform system of milk control, the board is hereby vested with power, and it shall be its duty to confer and co-operate with the legally constituted

authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for the foregoing purposes, the board shall have the power to conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this act.

27-422. Violations made misdemeanors--penalties. (a) Any person, required by this act to be licensed, who shall produce, sell, distribute, or handle milk in any way, except as a consumer, without first having obtained a license, as required by him by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding six hundred dollars ($600.00). Each day's violation of this provision shall constitute a separate offense. A violation of any provision of this act or of any lawful rule or order of the board, including a failure to answer subpoena or to testify before the board, shall be deemed a misdemeanor punishable by a fine not exceeding six hundred dollars ($600.00), and each day during which such violation shall continue shall be deemed a separate violation.

(b) The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, provided for in this act, and all such actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

(c) It shall be the duty of the county attorneys and deputy county attorneys, in their respective counties, diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations of the laws of the state relating to the provisions of this act.

27-423. Constructions, exceptions and limitations. The license required by this act shall be in addition to any other license required by any statute of Montana or any municipality of the state of Montana. This act shall apply to every part of the state of Montana.

If any portion of this act is held invalid or unconstitutional such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

No provision of this act shall apply or be construed to apply to foreign or interstate commerce except in so far as the same may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this act, affecting intrastate milk, shall immediately apply and the powers conferred by this act shall attach thereto.

27-424. Additional remedies. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act or to enforce compliance with any order, rule or regulation, of the board pursuant to the provisions of this act or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, after unanimous consent of all members of the board, may apply to the district court of the district wherein the action arises, for relief by injunction, mandamus or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of the Montana milk control board and it shall not be necessary in any action to which the board is a party that such action be brought by or against the state of Montana on relation of the Montana milk control board. The board shall have the power to institute action by its own attorney or counselor, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court, of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counselor with either in any court.

27-425. Transfer of assets. All assets, appurtenances and funds of the previously existing milk control board are hereby transferred to the herein created board.

27-426. Bonds required of distributors--amounts--forms and conditions. Every distributor before purchasing any milk from a producer shall execute and deliver to the milk control board a surety bond in the minimum sum of one thousand dollars ($1,000), executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be upon a form approved by the board and shall be conditioned upon the payment in the manner required by this act, of all amounts due to producers for milk purchased by such licensee or applicant during the license year. Said bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay any producer or producers for milk in the manner required by this act, the board shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owning to them and each of them by such distributor, and shall request all such producer-creditors to file a verfied statement of their respective claims with the board. Thereupon the board shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the board may require the filing of a new bond; and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond; and upon failure to file same within ten (10) days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among said producer-creditors.

The minimum bond of one thousand dollars ($1,000) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred gallons; distributors purchasing an average daily quantity of one hundred gallons and less than two hundred gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars ($2,000); distributors purchasing an average daily quantity of two hundred gallons and less than three hundred gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars ($3,000); distributors purchasing an average daily quantity of three hundred gallons or more

during any calendar month during a license year shall post a bond in the sum of five thousand dollars ($5,000).

In the event that any distributor so increases his purchases of milk during the license year that said purchases exceed the amount for which said distributor is bonded, said distributor shall forthwith post such additional bond or bonds as may be required to comply with the provisions of this section.

The board is authorized to require any distributor to furnish a bond or bonds in addition to those specified above if, after notice and hearing and upon good cause shown, it determines such additional bond or bonds are required to assure payment of all amounts due or to become due to producers.

Failure of any distributor who purchases milk from producers to execute and deliver the bond as herein provided and required shall constitute a violation of this act; failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute a violation of this act.

27-427. Repealed.

Repeal

Section 27-427 (Sec. 11, Ch. 192, L. 1959), relating to local advisory boards, was repealed by Sec. 10, Ch. 107, Laws 1971, and by Sec. 2, Ch. 272, Laws 1971.

27-428. Judicial review of orders. Any person or persons, jointly or severally, aggrieved by any decision or order of the milk control board may present to a court of record a petition, duly verified, setting forth that such decision or order is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within twenty (20) days after the filing and posting of the decision or order in the office of the board as required by section 27-413.

Upon presentation of such petition, the court may allow a writ of certiorari directed to the board to review such decision or order of the board and shall prescribe therein the time within which a return thereto must be made to the court and served upon the relator's attorney, which shall

not be less than ten (10) days and may be extended by the court. The writ shall command the board to certify fully to the court, at a specified time and place, a transcript of the record and proceedings, describing or referring to them with convenient certainty; that the same may be reviewed by the court, and may command the board to desist from further proceedings in the matter to be reviewed.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient for the board to return certified or sworn copies thereof, or of such portions thereof, as may be called for by such writ.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

When any such writ is granted, the cause shall have precedence upon the calendar of the court, and judgment and decree shall be entered therein as expeditiously as possible. The court shall affirm, modity, or reverse the decision or order of the board in accordance with law.

27-429. Service of process upon board. When any petition or complaint is filed in any court naming the milk control board as a party, process may be served upon said board by delivering to, and leaving with, the executive secretary of said board, at his office, at the state capitol, a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based. In case of the absence of the executive secretary from his office, the assistants, clerks, auditors, accountants, or other personnel in his said office shall accept and receipt for such service.